Supreme Court, U.S.
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No. 99A435

In The

Supreme Court of the United States

JOHN KOJO MENSAH,

Petitioner

v.

ST. JOSEPH COUNTY FAMILY INDEPENDENT AGENCY ET AL,

Respondent

On Petition For A Writ of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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31pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether Family Court Judge Thomas Schumaker is entitled to judicial immunity in an individual capacity suit under section 1983 for presiding over a hearing to determine the merits of a case filed in Federal Court in complete absence of all jurisdiction?

2. Whether the Rooker-Feldman doctrine is a bar to declaratory judgement action?

3. Whether the domestic relations exception to the exercise of federal jurisdiction apply to a declaratory judgement action in the meaning of 42 USC § 1983?

4. Whether individual capacity suit under 42 USC § 1983, 1985 against state officials is barred by Eleventh Amendment immunity?

5. Whether the Eleventh Amendment is a bar to suit against state officials in their official capacity for injunctive relief from unconstitutional acts?

6. Whether conspiracy between private person and state officials can result in section 1983 cause of action against a private person?

LIST OF PARTIES TO PROCEEDING BEFORE THE U.S. COURT OF APPEALS--SIXTH CIRCUIT

1. Michigan Family Court
2. Family Independent Agency, (FIA)
3. Judge Thomas Schumaker
4. Michael A. Mestelle
5. Ruth Lane
6. Cindy Theilin

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PETITION FOR A WRIT OF CERTIORARI

John Kojo Mensah, Pro se petitioner and father of the said minor children respectfully pray this United States Supreme Court to grant a Writ of Certiorari to review the judgement of the United States Court of Appeals at the Sixth Circuit issued on August 11, 1999.

◆

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE BY THE COURTS.

1. John Kojo Mensah v. St. Joseph County Family Independent Agency Et Al, No. 981726, Order Den. Reh. (6th Cir. 9/7/99) (unpublished)

2. John Kojo Mensah v. St. Joseph County Family Independent Agency Et Al, No. 981726, Order Affirming District Court Dismissal, (6th Cir. 8/11/99) (unpublished)

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STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

On appeal from the United States Court of Appeals, Sixth Circuit in Cincinnati, OH; jurisdiction is based on petitioner seeking appeal of the judgement of the court from a fraudulent Jury Trial on January 9, 1998 involving due process, 14th Amendment violations at the Michigan Family Court.

The jurisdiction of the court is invoked under 28 USC §§

1254(1), §§ 2101 and §§ 1251. Pursuant to Supreme Court Rule 29.4(b) and (c); petitioner states that 28 USC § 2403(a) apply in this case, therefore a copy of this initial document shall be served on the Solicitor General of the United States, Room 5614, Dept. of Justice, 950 Pennsylvania Ave., Washington, DC 20530-0001. Pursuant to 28 USC § 451 and 28 USC § 2403(b) petitioner states that the lower court did not certify to the state Attorney General the fact that the constitutionality of an act of congress was drawn into question.

PERTINENT CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS

1. Fourteenth Amendment, Section 1, United States Constitution:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Uniform Child Custody Jurisdiction Act, (UCCJA), Full Faith and Credit Clause.

28 § 1738A: The appropriate authorities of every state shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child

custody determination made consistently with the provisions of this section by a court of another state.

3. Michigan Child Welfare Law, MCL 712A.2. (b)(1) and (b)(2):

Whose parent or other person legally responsible for the care and maintenance of such child, when able to do so, neglects of refuses to provide proper or necessary medical, or other care necessary for his health, or who was abandoned by his parents, guardianship to: MCL 712A.2(b)(1).

Whose home or environment by reason of neglect, cruelty, drunkenness, criminality, or depravity on part of a parent, guardian or other custodian is an unfit place for such children to live in, to-wit: MCL 712A.2(b)(2).

4. Federal Diversity Jurisdiction, 28 USC § 1331 (1976 Ed., Supp.V.):

The district court shall have original jurisdiction of all civil action arising under the Constitution, laws, or treaties of the United States.

5. First Amendment, United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

6. 42 USC § 1983

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunity secured by the Constitution laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

7. Eleventh Amendment, United States Constitution:

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or Subjects of any Foreign State.

8. Eight Amendment United States Constitution:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

9. Fifth Amendment United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentation or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall

be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

This is a case of due process, equal protection clause 14th Amendment violation involving acts of jury tampering; and violations of 1st, 8th, and 5th Amendment of the United States Constitution. These acts were carried out under color of law or state authority by a Family Court judge respondent Thomas Schumaker, judicial officers, clerks, employees and supervisors of the FIA and court-appointed attorneys respondent Michael Mestelle among others and Ruth Lane, maternal relative stranger.

Following what is now a 15 year covert terror campaign and severe acts of rights deprivation orchestrated by Immigration and Naturalization Service, (INS) and the Central Intelligence Agency, (CIA) against him petitioner filed a complaint at the U.S. District Court in Northern Indiana seeking redress and possible injunction against the federal defendants, see United States Supreme Court case 99-151. The noted INS operatives then instructed petitioner's wife to kidnap his children from Indiana to Michigan. Subsequently petitioner filed for divorce but before a trial date could be set petitioner's wife "died" in a suspicious car/train accident. Such a covert act was orchestrated in order to place petitioner's wife in the "witness" protection program to avoid a disclosure of the terror campaign in the divorce trial. The Indiana state court therefore granted custody of the minor children to this petitioner on 10/29/97 in consistency with provisions of the Parental Kidnapping Prevention Act, (PKPA). But, respondents

Ruth Lane, FIA officials and the Family Court and its judicial officers including court-appointed attorneys conspired to contradict the custody ruling of the Indiana state court in violation of UCCJA (full faith and credit clause) by fabricating a bogus petition to take fraudulent jurisdiction of the minor children despite the absence of any history of abuse nor neglect as mandated by MCL 712 A.2 (b)(1), (b)(2) in violation of the above noted Constitutional rights. This conspiracy caused severe traumatic injury emotionally and mentally to petitioner and his children. As result of this conspiracy petitioner is listed on state registry as responsible for the abuse and neglect of his children; causing character defamation, isolation and deprivation of employment as a child welfare professional in Michigan; parental rights of petitioner were also terminated in another fraudulent trial as of 7/16/99; and a timely appeal filed. But the Family Court has refused to respond to two motions to stay enforcement of termination order.

REASONS FOR GRANTING THE WRIT

Issuance of a writ of certiorari to review the judgement and opinion of the United States Court of Appeals for the Sixth Circuit in this case is appropriate because statements in the ruling misrepresent petitioner's complaint and consequently renders a decision and conclusion that is in contradiction to precedent set by this Court under 42 USC § 1983 regarding Eleventh Amendment immunity, the Rooker-Feldman doctrine, the domestic relations exception and the exercise of federal jurisdiction.

1. Whether Family Court Judge Thomas Schumaker is entitled to judicial immunity in an individual capacity suit under section 1983 for presiding over a hearing to deter-

mine the merits of a case filed in Federal Court in complete absence of all jurisdiction?

The First Amendment as applied to the states through the Fourteenth Amendment was violated when the FIA, its officials, the court and its officials and Judge Schumaker used a copy of petitioner's civil rights complaint filed at the Northern Indiana District Court as the basis for an abuse and neglect petition claiming that he had "delusional-thinking" for seeking an injunctive relief against the U.S. Immigration and Naturalization Service, (INS) for orchestrating what is now a 15 year campaign of terror and rights deprivation against him and his minor children. The respondents then used their state authority to conspire under color of law with a court-appointed attorney, Michael Mestelle and others including Ruth Lane and Cindy Theilin (FIA) to develop a bogus petition and a fraudulently selected jury carried out by a certain Cathleen Coleman (Family Court clerk) such due process violation allowed a predetermined verdict to issue despite the absolute lack of jurisdiction. Thereby denying petitioner contact with his children despite death of their mother inflicting irreparable injury as a result.

The question presented here is whether Judge Schumaker as a Family Court judge had jurisdiction to determine the merits of petitioner's civil rights complaint filed at the proper venue at the United States District Court in accordance with 28 USC § 1331? Therefore the judge acted out of complete absence of all jurisdiction. Respondent Judge Schumaker used the Family Court to interfere with petitioner's exercise of 1st Amendment right, (Count I); and thereby violating the 14th Amendment of the U.S. Constitution. To further such a conspiracy, a dubious evidentiary hearing was carried out (Count II), where a copy of petitioner's civil right complaint filed in

federal court was used as a basis for the fraudulent proceeding in which a pre-selected jury (Count III), was allowed to hand down a predetermined verdict absent any history of abuse or neglect as mandated by Michigan Law. According to *Miles v. Killebrew*, 765 F.2d 69, 71 (6th Cir. 1985); a judge acts in clear absence of all jurisdiction, "if he knows that he lacks jurisdiction, or acts despite a clearly valid statute of case law expressly depriving him of jurisdiction." A judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Id., 356-357; *Bradley v. Fisher*, 13 wall., at 335, 351. Pg 355-357. A Family Court judge has no jurisdiction to address the merits of the civil rights complaint of petitioner. Such a procedure of fraudulent selection of jury at the Family Court which was discovered and pointed to Mestelle (court-appointed attorney) violated due process rights. USCA Const. 14th Amendment. Respondent was "state actor" against whom an allegation of deprivation of constitutional rights under color of law, (individual capacity suit) could be properly lodged in federal civil rights action in the meaning of 42 USCA § 1983, and § 1985.

In using a copy of petitioner's civil rights complaint filed at the district court against INS, the Family Court lacked the capacity to act as a court, thus acting in complete absence of all jurisdiction, see 28 USC § 1331, 1332; its judgement or decree is void. See, *Hooks v. Hooks*, 771 F.2d 937 (1985).

2. Whether the Rooker-Feldman doctrine is a bar to declaratory judgement action?

Rooker-Feldman doctrine does not bar this petitioner's federal action seeking declaration that state Family Court decree was void as a violation of due process and federal equal rights protection. This action was inextricably inter-

twined with state judgement; and petitioner's due process allegation did not implicate the merits of the Family Court decree, only the procedures leading up to it as a 14th Amendment violation.

The decree was procured by a variety of due process violations including fraudulent selection of jury for a predetermined verdict to issue, and using a copy of petitioner's civil rights complaint against a federal agency, (INS) as the sole basis for a Family Court proceeding when the merits of such federal suit (against the INS--federal agency) is totally out of complete jurisdiction of the Family Court. Petitioner was also denied prior notification of the preliminary hearing before the court and was only tricked to go to the court to pick up his children by Three Rivers Police. Upon arrival at the court, respondent Mestelle came out of the hearing; introducing himself as petitioner's court-appointed attorney. Failure by the Family Court to serve petitioner prior notice of hearing and conducting such hearing in his absence also constitutes due process violation. In essence the Family Court was used as a venue for covert reprisal for seeking relief against a federal agency and to further its terror campaign and rights deprivation which constitute a cruel and unusual punishment (8th Amend. U.S. Const. violation) in itself.

In the case of *Catz v. Chalker*, 142 F.3d 279 (6th Cir. 1998); the court analyzed two elements implicated in the potential operation of this jurisdictional rule. First, "in order for Rooker-Feldman doctrine to apply to a claim presented in federal district court, the issue before the court must be inexplicably intertwined with the claim asserted in the state-court proceeding." *Keene Corp v. Cass*, 908 F.2d 293, 296 (8th Cir. 1990). The Keene decision goes on to say: "under the Feldman doctrine, the federal claim is inextricably intertwined with the

state-court judgement if the federal claim succeeds only to extend the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, any thing other than a prohibited appeal of the state-court judgement." 908 F.2d at 296-97 (quoting *Penzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25, 107 S. Ct. 1519, 1533, 95 L.Ed.2d 1 (1987).

The second element is the requirement that the action brought in the district court be a "general challenge" to the constitutionality of the state law applied in the state action, rather than a "specific grievance" that the law was invalidly--even unconstitutionally--applied in plaintiff's particular case. This element is found in Feldman, where the plaintiff challenged as unconstitutional the District of Columbia's rules for admission to the bar.

In *Catz v. Chalker*, the court held that: "no where in the complaint does Catz make a general constitutional challenge to any specific Arizona law or rule of procedure; he simply attacks as "unconstitutional the manner in which the Arizona state court proceeding was conducted" (emphasis added). However we believed that cases stating that, to avoid the reach of the Rooker-Feldman doctrine, a case must represent a "general challenge" rather than a "specific grievance" do so in the context of direct attack on the substance of the state court decision. Here the claim that survives claim preclusion, as outlined above, are directed to the procedure used by the Arizona court, procedure that Judge Echols found, if true, to be "shocking." Very similar to the scenario in this case where fraud, jury tampering in the presence and knowledge of a state judge (Thomas Schumaker) and court; court-appointed attorneys; social workers (FIA) including failure to give no-

tice of hearing, and a total lack of jurisdiction is involved to the eminent violation of petitioner's due process right under the 14th Amendment; despite direct protest to court-appointed attorney; respondent Mestelle, co-conspirator. The court in Catz continued, "Thus, permitting jurisdiction in this case does not contravene the heart of the Rooker-Feldman doctrine, the prohibition of reviewing the substance of state court judgement." See also, *Sun Valley Foods Co. v. Detroit Marine Terminals, Inc.*, 801 F.2d 186, 188-89 (6th Cir. 1986). Where the court noted that although the district court; "has no authority to review final judgement of a state court in judicial proceedings, *Feldman*, 460 U.S. at 482, 103 S. Ct. at 1315,... a federal court "may entertain a collateral attack on a state court judgement which is alleged to have been procured through fraud, deception, accident, or mistake..." such as in petitioner's complaint. *Resolute Insurance Co. v. State of North Carolina*, 397 F.2d 586, 589 (4th Cir. 1968). See also, *Levis v. East Feliciana Parish Sch. Bd.*, 820 F.2d 143, 146 (5th Cir. 1987). Based on above facts due process challenge to state proceeding not barred by Rooker-Feldman doctrine.

Similarly, in *Penzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 107 S. Ct. 1519, 95 L.Ed.2d 1, the Second Circuit 784 F.2d 1133, 1144 (2d Cir. 1986), had held that Rooker does not bar a federal court from exercising jurisdiction over claims that certain state provisions "deny Texaco due process and equal protection as applied..." The Supreme Court did not specifically rule on the second circuit's ruling, but supported it in a series of individual concurrence. See, RICHARD H. FALLON, Jr., Et Al., HART WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 1504 (4th ed. 1996)("A majority of the Justices explicitly rejected" Penzoil's argument that "the rationale of the Rooker-Feldman doctrine,

properly understood, denied the lower federal courts any authority to displace state courts...") Justice Marshall stated, 481 U.S. at 25, 107 S. Ct. at 1533, "where federal relief can only be predicated upon conviction that the state court was wrong" a federal proceeding would be a prohibited appeal. However, the narrow remaining claims of the alleged procedural violations of Catz's constitutional rights (as in this petitioner's due process rights claim and others) do not rest on any substantive wrongness of the rulings of the Arizona courts; in this case the Family Court. The Rooker-Feldman doctrine does not bar the maintenance of such action in federal court.

3. Whether the domestic relations exception to the exercise of federal jurisdiction apply to a declaratory judgement action in the meaning of 42 USC § 1983?

Contrary to the sixth circuit ruling in this case see appendix II, petitioner filed this suit seeking a declaration that state Family Court decree was void as a violation of due process (14th, 1st and 8th Amendment violation), and that such a suit was not a "core" domestic relations case to which domestic relations exception to federal jurisdiction applied. This action does not seek declaration of custody decree as required in such cases indeed that determination had already been made by the Elkhart Superior Court which granted custody of petitioner's children to him, but instead presented a constitutional claim (USCA) Const. Amend. 14.), in which it was incidental that the underlying action involved custody of his minor children; and a violation of the Parental Kidnapping Prevention Act, (PKPA), and the Full Faith and Credit Clause of the Uniform Child Custody Jurisdiction Act, (UCCJA).

Domestic relations exception to federal jurisdiction ap-

plies only where a plaintiff positively sues in federal court for divorce, alimony, or child custody, that is not the case here, emphasis added; the child custody aspect of petitioner's constitutional claim is incidental. The alleged jury tampering and the predetermined verdict handed down through such fraudulent act in a court of law at the presence of Judge Schumaker and his co-conspirators; court-appointed attorneys; clerks, and FIA workers constitute a due process violation. The final analysis here is whether petitioner's action is a core domestic relations case, seeking a declaration of child custody or a constitutional claim in which it is incidental that the underlying dispute involves child custody? The remedy this petitioner seeks is a declaration that the Family Court decree is void as a violation of due process, see *Catz v. Chalker*, 142 F.3d 279 (6th Cir. 1998) This would seem to directly impact the Family Court decree and the care and custody of petitioner's children; on the other hand judgement obtained by fraud, or by a court without jurisdiction, as stated above, and/or violation of due process right (abuse of discretion) as carried out by the respondents is null and void. See, *Banner v. Banner*, 45 Mich. App. 148, 206 NW2d. 234 (1973); *Jackson City Bank & Trust Co. v. Frederick*, 271 Mich. 538, 260 NW 908, (1935) and *Hatcher v. Hatcher*, 129 Mich. App. 753, 343 NW2d 498, 1983.

This petitioner is not asking the district court to involve itself in the sort of questions attendant to domestic relations that are assumed to be within the special expertise of state courts--for instance divorce, alimony, child custody; those issues were determined by the Elkhart Superior Court. Here, this petitioner is asking the court to examine whether certain judicial proceedings, which happened to involve child custody issue, comported with constitutional guarantee of due process. This is a sphere in which the federal courts, may

claim an expertise equal to that of state courts. The Supreme Court, in *Ankenbrandt v. Richards*, 504 U.S. 689, 112 S. Ct. 2206, 119 L.Ed.2d 468 (1992) wrote in a similar scenario as this case that the "domestic relation exception encompasses only cases involving the issuance of a divorce, alimony, or child custody decree, we necessarily find that the Court of Appeals erred by affirming the District Court's invocation of this exception. This lawsuit in no way seeks such a decree; rather, it alleges that respondents...committed torts against...Ankenbrandt's children...," as in this case, against petitioner Mensah and his children; "Federal subject-matter jurisdiction pursuant to section 1332, thus is proper in this case." Although petitioner mentions custody of his children in his suit due to violation of UCCJA, full faith and credit clause; indeed the custody decision has already been rendered by the Indiana State Court and only incidental to the due process and equal rights violations argued above.

In, *Catz v. Chalker*, the court stated about the ruling in Ankenbrandt that; "we take this language to mean, plainly enough, that domestic relations exception applies only where a plaintiff positively sues in federal court for divorce, alimony, or child custody. This petitioner emphasizes that this is not the case here since his suit constitutes a due process civil rights violation tort case.

4. Whether individual capacity suit under 42 USC § 1983 against state officials is barred by Eleventh Amendment immunity?

Eleventh amendment does not bar individual capacity suit under 42 USC § 1983, 1985 against state officials for monetary damages. See, *Foulks v. Ohio Dept. of Rehabilitation & Correction*, 713 F.2d 1229, 1233 (6th Cir. 1983). In the

case of; *Scheuer v. Rhodes*, 416 U.S. 232, 94 S. Ct. 1683, 40 L.Ed.2d 90 (1974), this Supreme Court ruled that since *Ex Parte Young*, 209 U.S. 123, 500 (1908), it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law. *Ex Parte Young* teaches that when a state officer acts under a state law in a manner violative of the Federal Constitution he "comes into conflict with the supreme authority of that Constitution, and he is in that case stripped of his official representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." Id., at 159-160. (Emphasis supplied.)

The state has no power to impart such immunity similarly to judicial officers and state officials at the FIA for violations of petitioner's 14th Amendment due process rights by conspiring to use a fraudulent judicial proceeding and jury tampering in a case where the state court had no jurisdiction in the first place under 28 USC § 1331. The court reasoned further that damages against individual defendants such as in individual capacity suit in this scenario, are permissible remedy in some circumstances notwithstanding the fact that they hold public office. *Myers v. Anderson*, 238 U.S. 368 (1915). See generally *Monroe v. Pape*, 365 U.S. 167 (1961); *Moore v. County of Alemanda*, 411 U.S. 693 (1973), and concluded that in some situations a damage remedy can be as effective a redress for the infringement of a constitutional right as injunctive relief might be in another. Also, *Lintz v. Skipski*, 807 F.Supp. 1299 (W.D. Mich. 1992). There is no qualified immunity or discretionary relief in such a wilful misconduct or unconstitutional acts.

5. Whether the Eleventh Amendment is a bar to suit against state officials in their official capacity for injunctive relief from unconstitutional acts?

Ex Parte Young, 209 U.S. 123, 28 S. Ct. 441, 52 L.Ed.714 (1908) permits plaintiff-petitioner to seek injunctive relief to restrain state officials sued in their official capacity from engaging in unconstitutional conduct. As long as petitioner can prove standing, his claim under section 1983 can be for both damages (individual capacity), and injunctive relief (official capacity) as in *Los Angeles v. Lyons*, 461 U.S. 95, 105, 103 S. Ct. 1660, 1667, 75 L.Ed.2d 675 (1983). Although a state and its agencies may be immune from damages and injunctive relief in federal court, state officials are not immune under the Eleventh Amendment.

6. Whether conspiracy between private person and state officials can result in section 1983 cause of action against a private person?

Respondent Ruth Lane hid petitioner's children in her plot with FIA officials for 4 days at the death of their mother refusing to disclose their whereabouts despite inquires made to her, (Count I); even refused to notify petitioner of her involvement with the FIA, (Count II); also made bold discrete gestures to induce Judge Schumaker during proceedings, (Count III), which he complied. She further instructed other private parties to isolate petitioner and not to provide any helpful information on the children, (Count IV). Respondent Mestelle also, in carrying out conspiratorial objectives with the judicial officers in this case, induced petitioner to take the witness stand and testify against himself in violation of the 5th Amendment protection, (Count I); despite obvious protest from petitioner that he had no history of abuse nor ne-

glect of his children. When petitioner further protested that a copy of his complaint against INS should not be used for Family Court proceeding due to exercise of 1st Amendment right (Count II), Mestelle ignored such a plea and did wilfully engage in a dubious evidentiary hearing presided over by respondent Judge Schumaker to enter such a federal court complaint as evidence to a bogus neglect petition fabricated by respondent Cindy Theilin and Lane.

During the jury selection petitioner noticed a court clerk, Cathleen Coleman picking-out a pre-selected list of jurors, and immediately protested it both verbally and in writing to Mestelle but he knowingly refused to address the issue, (Count III). Against petitioner's directives he handed the children's U.S. passports to the court for confiscation, (Count IV); and also conspired with judicial officers to deny unsupervised visits and phone contact with the children, (Count V). Despite the "death" of the mother it took two weeks before any contact took place, causing both children to be severely dissociated from traumatic pain, anxiety and anguish. These and several acts specifically carried out wilfully by respondent Mestelle in conspiracy with the noted judicial officers make him liable under section 1983. Under 42 USC § 1983, a private party such as Lane and Mestelle may be reached through a conspiracy theory, provided the party acts in concert with an agent who acts under color of law as in this scenario. *Dennis v. Sparks*, U.S. 66 L.Ed.2d 1985 (1980). These private persons did more than passively acquiesce to directions given by state officials having shared a common objective of conspiracy. See *Lintz v. Skipski*, 807 F.Supp. 1299. Mestelle and Lane were in joint action with state officials to carry out such due process, 5th, 8th and 1st Amendment violation of the U.S. Constitution. Both parties also benefited financially from the conspiracy; Mestelle earning legal fees

while Lane had placement of the children these past two years receiving monthly per diem and other similar benefits.

The conspiratorial plot by Ruth lane, Mestelle, Cindy Theilin, (FIA) and the various judicial officers among others to deprive petitioner the right to due process and equal protection of laws guaranteed by the constitution are liable under 42 USC § 1985 (3) as well. The conspiracy had a racially invidiously discriminatory animus behind it. See *Griffen v. Breckenridge*, 403 U.S. 88, 102 (1971). Each respondent violated 42 USC § 1986 also in that they had actual knowledge, and did play a key role in the conspiracy and its execution causing emotional trauma and irreparable emotional and mental injury on petitioner and his minor children then ages two and six years old. See *Hampton v. City of Chicago*, 484 F.2d 602 (7th Cir. 1973), cert. denied, 415 U.S. 917 (1974).

CONCLUSION

In as far as petitioner's due process rights and procedural violations suit are not barred by federal courts jurisdiction, petitioner pray this court to grant his writ for certiorari.

Respectfully submitted,

JOHN KOJO MENSAH,
Pre se Petitioner

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Case No 98-1726
United States Court of Appeals
For the Sixth Circuit

JOHN KOJO MENSAH
Plaintiff - Appellant

v.

ST. JOSEPH COUNTY FAMILY INDEPENDENT AGENCY; ST. JOSEPH COUNTY FAMILY COURT; RUTH LANE; MICHAEL A. MESTELLE
Defendant - Appellees

BEFORE: Siler and Gilman, Circuit Judges; Graham, District Judge

Upon consideration of the petition for rehearing filed by the appellant,

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED**.

ENTERED BY ORDER OF THE COURT
Leonard Green, Clerk

The Hon. James L. Graham, U.S. District Judge for the Southern District of Ohio, sitting by designation.

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JOHN KOJO MENSAH
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Defendant - Appellees

BEFORE: Siler and Gilman, Circuit Judges; Graham, District Judge

John Kojo Mensah, proceeding Pro se, appeals a district court order dismissing his civil rights complaint filed pursuant to 42 USC §§ 1983, 1985, and 1986. This case has been referred to a panel of the court pursuant Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P.34(a).

Seeking monetary and equitable relief, Mensah filed suit against the St. Joseph County, Michigan, Family Independent Agency, whose actual name is Family Independent Agency, (FIA) the St. Joseph County Family Court ("family court"); Ruth Lane, the maternal great-grandmother of his children, Michael A. Mestelle, an attorney who represented

him during child abuse/neglect proceedings in the family court; Cindy Theilin, an employee of the FIA; and Judge Thomas E. Schumaker, who presided over the family court proceedings. Mensah alleged that, pursuant to a divorce proceeding which he initiated, the Elkhart, Indiana, Superior Court awarded him custody of his two minor daughters following the death of their mother. However, Mensah claims that the defendants refused to honor the Indiana custody award and conspired to violate his civil rights by depriving him of the custody of his two minor children. Mensah also alleges that the defendants violated certain provisions of the Parental Kidnapping Prevention Act (PKPA) and the Uniform Child Custody Jurisdiction Act (UCCJA).

All of the defendants filed motions to dismiss, to which Mensah responded. On May 20, 1998, the district court granted the defendants' motions pursuant to Red. R. Civ. P. 12(b)(6). The district court dismissed the action on the following grounds: 1) Judge Schumaker is entitled to judicial immunity from suit; 2) the action, to the extent it seeks monetary relief, is barred by the Eleventh Amendment; 3) the action, to the extent it seeks injunctive relief, is barred by the *Rooker-Feldman* doctrine; 4) the domestic relations exception to the exercise of federal jurisdiction applies so as to bar consideration of the complaint; and 5) the conspiracy allegations are insufficient to support liability under § 1983 for civil rights violations by private individuals.

Mensah has filed a timely appeal in which he contends that the district court improperly dismissed his complaint for failure to state a claim upon which relief may be granted. The defendants request oral argument if this court deems it necessary. In addition, the defendants subsequently filed a motion to dismiss the appeal based upon Mensah's failure to file a joint appendix in compliance with Rule 30, Rules of the Sixth Circuit. Defendant Mestelle has requested attorney fees

in his brief. However, since Mestelle made his request in his brief and not in a separate motion, the request is denied. *See* Fed. R. App. P. 38.

This court reviews de novo a district court's dismissal of a suit pursuant to Fed. R. Civ. P. 12(b)(6). *See Sistrunk v. City of Strongsville*, 99 F.3d 194, 197 (6th Cir. 1996), *cert. denied*, 520 U.S. 1251 (1997); *Wright v. MetroHealth Med. Ctr.*, 58 F.3d 1130,1138 (6th Cir. 1995), *cert. denied*, 516 U.S. 1158 (1996). When considering a Fed. R. Civ. P. 12(b)(6) motion to dismiss, "[t]he district court must construe the complaint in a light most favorable to the plaintiff, accept all of the factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claims that would entitle him to relief." *Columbia Natural Resources, Inc. v. Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995), *cert. denied*, 516 U.S. 1158 (1996); *see also Sistrunk*, 99 F.3d at 197; *Wright*, 58 F.3d at 1138. While a liberal construction of a complaint is contemplated by Fed. R. Civ. P. 12(b)(6), the court is not required to "accept as true legal conclusions or unwarranted factual inferences." *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987).

Upon review, we affirm the district court's order for some of the reasons stated by the district court. *See City Management Corp. v. U.S. Chem. Co.*, 43 F.3d 244, 252 (6th Cir. 1994)(this court "may affirm on any grounds supported by the record"). Because federal courts lack jurisdiction over Mensah's claims, the district court properly dismissed Mensah's complaint, as it fails to state a claim upon which relief may be granted. *See Sistrunk*, 99 F.3d at 197. Neither the UCCJA nor the PKPA provides a private right of action in federal court to determine the validity of two conflicting state custody decrees. *See Thompson v. Thompson*, 484 U.S. 174, 187 (1988): *DeMent v. Oglala Sioux Tribal Court*, 874 F.2d 510, 513 (8th Cir. 1989); *In re Larch*, 872 F.2d 66, 68

(4th Cir. 1989); *Becker v. California*, No 92-16676, 1994 WL 41073, at *1 (9th Cir. Feb 10, 1994)(unpublished memorandum). If Mensah felt aggrieved by the Michigan court order, his remedy was to appeal through the state courts. *See Thompson*, 484 U.S. at 187.

The district court also correctly declined to exercise jurisdiction over Mensah's civil rights claims because they involve domestic relations matters. *See Catz v. Chalker*, 142 F.3d 279, 290 (6th Cir. 1998). Federal courts have no jurisdiction to resolve domestic relations disputes involving divorce, alimony, or child custody. *See Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992). While Mensah attempts to assert a civil rights claim, his complaint clearly questions the underlying domestic relations issues by challenging the family court order granting temporary custody of his children to the FIA and specifically requesting the court to award custody of his children to him.

Because the domestic relations exception to the exercise of jurisdiction is dispositive of Mensah's complaint, it is not necessary to discuss the remaining grounds relied upon by the district court for dismissal of this case. Accordingly, the motion to dismiss is denied and the district court's order is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
Signed, Clerk